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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 192

THOMAS H. KEEGAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-14) is reported at 331 F. 2d 257.

JURISDICTION

The judgment of the court of appeals was entered on April 2, 1964. A petition for rehearing was denied on May 19, 1964. The petition for a writ of certiorari was filed on June 17, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner was entitled to see the grand jury testimony of a government witness.

2. Whether each payment of money received by a union official from a single employer is a separate offense under Section 302 of the Labor-Management Relations Act.

3. Whether ignorance of the law is a defense under Section 302.

4. Whether petitioner was physically competent to stand trial.

STATUTE INVOLVED

The Labor-Management Relations Act of 1947, as amended, 73 Stat. 537, 538, 29 U.S.C. 186(a)-(b) (Supp. V, 1963), provides in pertinent part:

> Sec. 302. (a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—
>
> (1) to any representative of any of his employees who are employed in an industry affecting commerce;
>
> . . .
>
> (b) (1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a).

STATEMENT

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted on 46 counts of an indictment charging him with receiving payments of money from an employer whose employees belonged to a labor union, of which petitioner was a representative, in violation of Section 302(b) of the Labor-Management Relations Act of 1947, as amended, 73 Stat. 538, 29 U.S.C. 186(b) (Supp. V, 1963) (A. 12). Under each of the first five counts, petitioner was sentenced to serve one year in prison and to pay a fine of $1,000, the sentences to run consecutively. He was sentenced to one year's imprisonment on each remaining count, the latter sentences to run concurrently with the sentence under count five—resulting in a total sentence of five years and $5,000 (A. 359-360). The court of appeals affirmed the conviction (Pet. App. 1-14; 331 F. 2d 257).

Between October 1956 and July 1961, petitioner, the business agent of a local labor union, received 46 payments of money from agents of a trucking company operating in interstate commerce whose drivers belonged to petitioner's union (A. 75, 137-138, 238). Counts 1-10 were proved by the witness Arthur Holt, who testified that, while he was office manager of the company's Chicago terminal, he made ten monthly payments of $200 to petitioner (A. 76-111).

"A" refers to petitioner's appendix in the court of appeals.

Counts 11-26 and 28-39 were proved by similar testimony from the terminal manager, William E. Carey, who made the monthly payments to petitioner after Holt resigned (A. 136-185). The remaining counts, 41-48, involved payments made between November 1959 (when Carey left the office) and July 1961. These payments were made pursuant to an arrangement under which the company agreed to pay more rent to Howard Ryerson, who leased trucks to the company, in return for Ryerson's agreement to make payments to petitioner (A. 179, 212-216, 263-267).

ARGUMENT

1. After Holt testified on direct examination that he had cashed checks and paid the proceeds directly to petitioner, defense counsel made a demand for production of documents under 18 U.S.C. 3500. At this point, government counsel gave the defense a statement that Holt had given to the F.B.I. and also produced for inspection by the judge the transcript of Holt's testimony before the grand jury (A. 117-118). The judge inspected the minutes but refused to turn them over on the ground that they were not within the purview of 18 U.S.C. 3500 (A. 118-120).[1] On cross-examination, Holt admitted that in his statement to the F.B.I., he had said that after cashing the checks he gave the proceeds to his office supervisor, rather than to petitioner (A. 126-128). Holt also admitted that he had given the same account to grand juries in

[1] A copy of this statement is being lodged with the Clerk of the Court.

Grand Rapids and Chicago (A. 129-130). Petitioner then renewed his motion for production of the grand jury minutes under 18 U.S.C. 3500, and the judge again denied the motion (A. 130, 136).

It is established that grand jury minutes are not producible under the Jencks Act, 18 U.S.C. 3500. *Pittsburgh Plate Glass Co.* v. *United States*, 360 U.S. 395, 398. The issue was never presented to the judge in terms of a "particularized need" for the transcript, as prescribed in this Court's opinion in *Pittsburgh Plate Glass*, 360 U.S. at 400. Nor could petitioner show any such need. He had been given the F.B.I. statement, which contained the same contradictory account of the payments as the grand jury testimony, and the witness had admitted making the inconsistent statements under oath. Neither court below, after examining the grand jury minutes, found any other material inconsistencies. Thus the refusal to turn over the minutes could not have been prejudicial. *See Rosenberg* v. *United States*, 360 U.S. 367, 370-371; *United States* v. *Santore*, 290 F. 2d 51, 67-68, (C.A. 2), certiorari denied, 365 U.S. 834.

2. It has been held that each payment of money received by a labor representative is a separate offense under Section 302. *United States* v. *Alaimo*, 297 F. 2d 604 (C.A. 3), certiorari denied, 369 U.S. 817 (holding 34 payments by one employer to a union representative resulted in 34 separate offenses); see also *United States* v. *Inciso*, 292 F. 2d 374 (C.A. 7), certiorari denied, 368 U.S. 920 (holding 22 payments, each by a different employer, resulted in 22 offenses). Moreover, in the

closely analogous cases of bribery and "protection" payments, each payment constitutes a separate offense. *Patton* v. *United States*, 42 F. 2d 68 (C.A. 8); see *Biddle* v. *Wilmot*, 14 F. 2d 505 (C.A. 8).

3. The trial court correctly instructed the jury that ignorance of the provisions of Section 302 was not a defense (A. 339). The instructions merely reiterated a settled principle of criminal law. *E.g., Ellis* v. *United States*, 206 U.S. 246. Although this principle is not applicable to certain offenses that require specific intent to evade a legal obligation or prohibition known to the defendant, the misdemeanor statute involved here is not within that narrow exception. *United States* v. *Carter*, 311 F. 2d 934, 943 (C.A. 6), certiorari denied *sub nom. Fifer* v. *United States*, 373 U.S. 915; *United States* v. *Ryan*, 232 F. 2d 481 (C.A. 2). Any contrary suggestion in the language of earlier decisions of the Seventh Circuit—see *United States* v. *Gilus*, 300 F. 2d 836, 839-840, certiorari denied, 371 U.S. 817, and *United States* v. *Iacino*, 292 F. 2d 374, 379, certiorari denied, 368 U.S. 920—has been disapproved by the holding of that court in the present case.

4. Contrary to petitioner's final contention, the record shows that he was not physically incompetent to stand trial. Before the trial, the court granted three continuances on doctor's recommendations (two of which were by United States Public Health Service physicians) that petitioner had not recovered sufficiently from a heart attack to make trial advisable (A. 16-27). Finally, in June 1962, the Public Health Service found petitioner able to

stand trial (A. 40-41). In October 1962, when the case was called for trial, petitioner requested another heart examination by the Public Health Service, which the court granted after the parties agreed to abide by the medical findings. Specifically, petitioner agreed to go to trial if the findings were favorable to the government, and the government agreed to accept another continuance or to dismiss the indictment if the findings were favorable to petitioner (A. 38-42).

The Public Health Service physician reported that it was doubtful whether petitioner could ever stand trial (A. 44-46, 366-368). Because none of the examining Public Health Service physicians was a heart specialist, the government insisted that a cardiologist should examine petitioner before the indictment should be dismissed (A. 47-58). A Dr. Maher, known to the trial court as a distinguished cardiologist, was agreed upon; but, after Dr. Maher indicated that his theories about the type of heart attack involved would probably compel a finding that petitioner could stand trial, another cardiologist was chosen (A. 56-57, 64-70). The second cardiologist, Dr. Paul, found that petitioner was able to undergo the strain of a trial (A. 59-63). Consequently, there was more than ample evidence to support the trial court's finding that petitioner was able to go to trial.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1964